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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/677,418
Filing Date: October 02, 2003
Appellant(s): LEI ET AL.

R. Ross Viguet
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/16/2009 appealing from the Office action mailed 12/23/2009.

(1) Real Party of Interest

A statement identifying by name the real party in interest in contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0193951 Fenton

2002/0103935 Fishman

2004/0249768 Kontio

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 32 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenton et al. (Pub. No.: US 2003/0193951 A1), hereinafter "Fenton" in view of Fishman.

3. As to claim 32, Fenton discloses the invention substantially including, storing content within a database, said database being coupled to a server(Fenton, [0008], where disclosed is a multimedia database and obviously database);

uniquely identifying said stored content (Fenton, [0066] discloses the means to uniquely identify a version number and message type which can interpret as unique identifier for each content, record, item etc.);

after said storing and identifying, receiving, at said server, from a first user device of a plurality of user devices an abbreviated message including identification of certain content of said stored content for sending at least a portion of said stored content to a user device of said plurality of user devices as a data rich message, wherein said data rich message is selected from the group consisting of: video data and audio data (Fenton, Fig.1, [0037], describes the core infrastructure of claimed limitation as he MMS 100 will support the ability to create, update, store, transfer, interrogate, manage

and retrieve a user's multimedia messaging profiles. The multimedia messaging profiles will allow a user to configure and personalize his or her multimedia messaging environment and [0038], A recipient will be informed of the reliability of the identity of the sender in case the sender has authorized his identity to be transmitted. The integrity of multimedia messages during transit will be assured to extent of the network capabilities. In addition, the MMS 100 will be intrinsically resistant to attempts of malicious or fraudulent use.);

compiling, at said server, said data rich message using said identification of said certain content to retrieve appropriate content of said stored content from said database for inclusion in said data rich message (Fenton, [0040], Multiple media elements can combine into a composite single multimedia message using MIME multipart format as defined in RFC 2046. The media type of a single multimedia message element can be identified by its appropriate MIME type whereas the media format can be indicated by its appropriate MIME subtype. The MMS User Agents 102, 104, 106, 108, 110 and 112 can support media formats or codecs for supporting media types, such as Text (plain text; character encoding (charset) containing a subset of the logical characters in Unicode);

Fenton however is silent on disclosing explicitly, transmitting said compiled data rich message to said second user device.

Fishman however discloses, transmitting said compiled data rich message to said second user device (Fishman, Fig.2, Abstract, content server is equivalent to media delivery system and Gateway receives the content to deliver it to devices A, B or

C, Content store/Web server stores the user and device specific information along with data and obviously content server/web server has the data stored prior to receiving a request from client device, further in a database such as disclosed by Fishman, any new data stored is identified and assigned a unique identity which is also well known in the art);

Therefore it would have been obvious to one of the ordinary skilled in the art at the time the invention was made to combine the teachings of Fenton with the teachings of Fishman in order to provide a mobile gateway to customize content based on one or more operating characteristic of a mobile client. The mobile gateway includes content transforms based on the individual operating characteristics of the various mobile clients that are supported. Upon receiving content for a mobile client, the mobile gateway identifies the appropriate transform, transforms the content, and sends the transformed content to the mobile client.

4. As to claim 43, Fenton and Fishman disclose, the invention substantially as applied to claims 10, and 32 above, including, a gateway server for use in a communication network where users may direct a transfer of large bandwidth messages, to other users (Fenton, Fig.1, Element-126), said gateway server comprising:

at least one database for storing content (Fenton, Fig.1, Element-132, 134), said stored content being uniquely identified (Fenton, Fig.1, [0041, lines 22-31], and

distribution control apparatus for receiving from at least one of said users a unique identification of certain content of said stored content (Fenton, Fig.1, Element-

126, [0028], where MMS server acts as message distributor) and for sending at least a portion of said uniquely identified content to a recipient identified by said one user (Fenton, Fig.1, [0028], where message is personalized, filtered, screened, formatted, deleted base on user profile is done at MMS server),

wherein said receiving occurs after said content has been stored and uniquely identified (Fishman, Fig.2, Abstract, content server is equivalent to media delivery system and Gateway receives the content to deliver it to devices A, B or C, Content store/Web server stores the user and device specific information along with data and obviously content server/web server has the data stored prior to receiving a request from client device, further in a database such as disclosed by Fishman, any new data stored is identified and assigned a unique identity which is also well known in the art).

5. As to claim 44, is rejected for the same rationale as applied to claim 43 above and further, Fishman discloses the user preferences (Fishman, Fig.2, [0011], where specific attributes are exchanged to deliver the message as per device requirements).

6. Claims 33-42 and 45-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenton and Fishman as applied to parent claims 10 and 32 above in view of Kontio et al. (Pub. No.: US 2004/0249768 A1), hereinafter "Kontio".

7. As to claim 33, Fenton and Fishman disclose the invention substantially as in parent claim 32, including, displaying content to said first user (Fenton, [0026], where user has the ability to view the message.

Fenton and Fishman however are silent on, wherein said displaying said content includes providing information identifying corresponding said stored content. Kontio however discloses, wherein said displaying said content includes providing information identifying corresponding said stored content (Kontio, Abstract, where digital voucher references a primary content that contains information that can distilled out a preview).

Therefore, it would have been obvious to one ordinary skilled in the art at the time the invention was made to combine the teachings of Fenton and Fishman as applied to claims above with the teachings of Kontio in order to provide a system to control the distribution of digital assets in communications network.

8. As to claim 34, Fenton, Fishman and Kontio disclose the invention substantially as in parent claim 32, including, wherein said content is displayed to said first user on a device separate from said use device (Kontio, [0232], where kiosk terminal could be the separate device from user device or device in used).

9. As to claim 35, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 34, including, wherein said separate device comprises a device selected from, a kiosk (Kontio, [0238], which has a display monitor where product is displayed and key's could be used to retrieve data or specification about product and downloading ticket is a form of transaction).

10. As to claim 36, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 34, including, wherein said separate device provides said information

identifying corresponding said stored content to said first user device electronically (Fenton, [0028], where appropriate message format could be an electronic mail).

11. As to claim 37, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 34, including, wherein said separate device receives said abbreviated message from said first user device (Kontio, [0018], where inquiring device is user device and listening device can be said separate device and inquiry message searching could be abbreviated message).

12. As to claim 38, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 34, including, transmitting, by said first user device, said abbreviated message via a native network of said first user device (Fenton, Fig.1, [0026], where message can be send or received via one or more network and any of the displayed network could be a native network).

13. As to claim 39, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 38, including, wherein said native network comprises a cellular telephone network (Fenton, Fig.1, Element-118, 120, 122).

14. As to claim 40, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 40, including, wherein said native network comprises a WLAN (Fenton, Fig.1, Element-124, where internet/IP Network could be WLAN).

15. As to claim 41, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 32, including, wherein said abbreviated message comprises a short message service (SMS) message (Fenton, [0003], where messages could be SMS).

16. As to claim 42, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 32, including, prior to said compiling said data rich message, identifying a version of said certain content suitable for use by said second user device (Fenton, [0066, lines 32-38], where message carries the version and [0028], where all the compilation such as, formatting, screening, deleting and modification is done).

17. As to claim 45, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 43, including, wherein said stored content is not stored under control of said user (Fenton, Fig.1, Element-134, Abstract, where database is storage content and is a centralized database).

18. As to claim 46, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 43, including, transmission apparatus for sending portions of said stored content (Fenton, Fig.1, [0028], where MMS is used for sending and receiving messages with unique message identifiers and can format, filter and screen messages), along with corresponding said unique identity of said content, over a communication network in a non-user specific broadcast mode (Fenton, Fig.1, [0029], where MMS Relay 128 uses the appropriate protocol e.g. “SMTP” to transfer the messages).

19. As to claim 47, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 43, including, wherein said gateway server includes said transmission apparatus (Fenton, Fig.1, Element-128 can be interpret as transmission apparatus since it uses SMTP protocol which is used for data transmission).

20. As to claim 48, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 43, including, wherein said database is arranged to include at least one message specific to one of said users (Fenton, [0027], where database 134 is customer or subscriber directory and contains a customized processing instructions specific to the user).

21. As to claim 49, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 43, including, wherein said message specific to one of said users is also available to selected others of said users (Fenton, [0027], since database 134 is communicatively coupled to the other databases and MMS server therefore, it is available to other users also).

As to claim 50, Fenton, Fishman and Kontio disclose, the invention substantially as in parent claim 43, including, wherein said user is charged for the use of said database according to certain parameters (Fenton, [0045], where customer is charged for submitting or retrieving multimedia messages).

(10) Response to Argument

A) 1. Prior art “Fenton and Fishman” does not discloses, “ after storing content in a database, an abbreviated message is received at the server from a first user device, and the abbreviated message includes identification of at least a portion of the content for sending to a second user device".

Examiner respectfully disagrees. Fenton in paragraph [0026] discloses the architecture of messaging system where user agents 102-110 are connected with MMS Relay system 126 via variety of network. MMSE 114 provides all the necessary functionality including e.g. delivery, storage, notification etc. Therefore, all messages between users 102-110 are delivered via MMSE 114, which stores the message first and using MMS relay component to deliver the message to other users via using 2G, 3G, mobile network or internet / IP network. Further in paragraph [0046], Fenton discloses, the MMS abstract messages are used between relay server and user agent within said networks which are similar to the claimed abbreviated messages. It is obvious that in any network each and every message has identifiers associated with it along with source and destination addresses. Fenton in paragraph [0066] discloses The MMS application protocol will provide means to uniquely identify the version number and message type in each abstract message defined here. Therefore, Fenton clearly teaches the limitation.

2. Prior art “Fenton and Fishman” does not discloses, “a gateway server for use in a network where users direct a transfer of messages to other users" or at least one

database for storing content and a distribution control apparatus for receiving a unique identification of certain content of the stored content and for sending at least a portion of said uniquely identified content to a recipient identified by the user" or "receiving occurs after said content has been stored and uniquely identified".

Examiner respectfully disagrees and again suggests the teachings from Fenton, Fig.1 discloses, an MMSE system 114 which is similar to the claimed gateway server which directs or forwards or deliver messages from one user to another users. Also as described in [0004], where Fenton clearly discloses, a non-real time multimedia message as observed by the user is a combination of one or more different media elements in a multimedia presentation that can be transferred between users without having to be transferred in real time therefore, Fenton clearly requires the content to be stored before being delivered (non-real time transfer) and further it is noted that appellant is arguing the limitation which is in the preamble and not in the body of the claim. Fenton also discloses that in the MMSE which is similar to the claimed Gateway have message storage 132, a database 134 and an MMS Relay 128 along with MMS server 130. All the other limitations are similar to as discussed above in section A under point 1 above.

B) Claims 33-42 and 45-50 are rejected under U.S.C 103(a) as being unpatentable over Fenton and Fishman in view of Kontio. Since these said claims depend either directly or indirectly from independent claims 32 and 43, thus inherits all

the limitations of their respective independent claims. As discussed above, Fenton and Fishman does not teach all the limitations of claims 32 and 43, Appellant further states that Kontio does not teach these limitations.

Examiner would like to point out that Kontio is not relied upon to teach the limitations discussed in independent claims 32 and 43 above.

1. Appellant states that Kontio does not teach, "said content is displayed to first user on a device separate from said use device".

Examiner would like to point out that "said use device" is different from "said user device". Further a Kiosk is a terminal / apparatus which conventionally includes a display. As shown in Kontio, Fig.1, content can be obtained via a personal area network from a distributing terminal 100 having a display therefore, limitation is met.

2. Appellant states that hindsight reconstruction is used to reject claim 37.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

3. Appellant states that "prior to said compiling said data rich message, identifying a version of said certain content suitable for use by said second user device".

Examiner would like to point Fenton, Fig.12 and customized processing instructions. Fenton clearly teaches in paragraph [0132]-[0134], determination of a compatible format, i.e. version, of the multimedia message to send to a destination device and subsequently converting to the compatible format according to capabilities of the destination device.

4. Appellant states that "transmission apparatus for sending portions of said stored content, ...over a communication network in a non-user specific broadcast mode.

Examiner states, Fenton in paragraph [0048] discloses a unified mail box to receive (has to be transmitted) messages (broadcast) that can be accessed by both MMS users and others (non-user specific) who can access the system via other devices.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/T. H./

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